

Holt International CHILDREN'S SERVICES

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Holt Response to Regulations

TO: U.S. Department of State
GA/OCS/PRI
Adoption Regulations Docket Room, SA-29
2201 C Street NW.
Washington, DC 20520

FROM: Holt International Children's Services
PO Box 2880
Eugene, OR 97402
(541) 687-2202

RE: Comments on State Department regulations on Inter-country Adoption State/AR-01/96

Introduction

Holt International Children's Services was established in 1956 when the organization pioneered intercountry adoption from Korea following the Korean War. Holt International is the oldest and largest international adoption agency in the country and has provided intercountry adoption services from more than twenty countries. In our nearly fifty-year history, Holt has placed more than 60,000 children with adoptive families in the United States. Currently Holt has international child welfare and adoption programs in fourteen countries and through our intercountry adoption program places approximately one thousand children a year with families in the United States.

Holt International's nearly 50 years of experience with intercountry adoption provides a unique historical perspective and more than five decades of institutional memory of the evolution of intercountry adoption.

Holt International Children's Services believes that "Every Child Deserves a Home of His Own" and is committed to permanency for children, not to intercountry adoption. However, the reality is that for literally tens of thousands of children, domestic adoption, and for many of these children, intercountry adoption, is the only possibility for them to have a family.

As intercountry adoption has become a more common practice in an increasing numbers of countries, Holt has also observed the increasing effect of market forces and unethical practices surrounding international adoption. Holt believes the Hague Convention in Respect of Intercountry Adoption is necessary to protect the institution of adoption, and more significantly, the birth and adoptive families, and most importantly, the children who may be adopted.

Post Office Box 2880
Eugene, OR 97402
PH 541.687.2202
Fax 541.687.2205
info@holtinternational.org
www.holtinternational.org



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Holt International acknowledges that in practice the Hague Convention will set up a procedure that is at best complex and at worst an unwieldy bureaucracy that is a barrier, not a means of protecting children and families. These Proposed Hague Regulations have incorporated many of the recommendations of the adoption community and have generally established a sound framework for adoption agencies and providers. Holt International is submitting comments to specific regulations with recommendations.

96.14 Providing adoption services using supervised providers, exempted providers, public bodies, or public authorities.

Comment:

Agencies and families who want the home study and post-placement services performed by the same person or agency, said agencies will not be able to work with exempt providers. This regulation poses a significant dilemma for families, primary agencies and home study providers. This requirement does NOT further the Convention's goal of improving adoption services.

The regulations will require home study agencies to decide whether to provide other adoption services (such as post-placement services) in addition to home studies. If the agencies that provide home study services opt not to do post-placement services, they run the risk that primary agencies will not work with them.

Recommendation:

and the definition of "Exempted provider" (96.2) to include "post-placement services":

Exempted provider means a social work professional or organization that performs a home study on prospective adoptive parent(s) or a child background study and **post-placement services** in connection with a Convention adoption (including any reports or updates), but that does not provide any other adoption service in the case.

96.33 Budget, audit, insurance, and risk assessment requirements.

Comment 96.33(e):

The proposed rule that an agency or person "maintains sufficient cash reserves or other financial resources to meet its operating expenses for three months" is vague and places an unreasonable burden on agencies and persons. Certainly it is reasonable to require that agencies and persons operate on a sound financial footing with sufficient financial resources to provide services for which fees have been collected. The financial viability of any agency or person is not necessarily assured by a single and vaguely defined balance sheet ratio. In general, these proposed regulations provide sufficient information to clients to allow them to evaluate the ability of any agency or person to provide the service identified without the three month rule.

Recommendation 96.33(e):

Post Office Box 2000
Eugene, OR 97402
Ph 541.347.2202
Fax 541.347.2175
info@holtinternational.org
www.holtinternational.org



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The agency's or person's balance sheets show that it operates on a sound financial basis and generally maintains sufficient cash reserves or other financial resources to meet its operating expenses for three months, taking into account its projected volume of cases size, scope and financial commitments.

Comment 96.33(g):

The proposed rule for an "independent professional assessment of the risks it assumes" is vague and places an unreasonable burden on agencies. Certainly it is reasonable and desirable for agencies to assess and manage risk as part of a comprehensive and sound agency management plan. A risk assessment can and should be done professionally by a combination of the agency's management, insurance agent or broker, legal counsel, financial advisor and/or other appropriate professionals. It is not reasonable to place the basis for determining the type and amount of insurance required in the hands of an outside consultant who does not have responsibility managing the organization. Any risk assessment includes identifying risks and determining appropriate actions to manage the risks to allow the organization to meet its mission. Managing risks may include purchasing insurance as well as more proactive actions such as, developing policies, practices, quality control, and continuous improvement and management systems to improve the likelihood of positive service delivery outcomes.

In addition, as noted in our comments on section 96.39(d), due to the confusion regarding terminology surrounding the provision, which limits an agency's right to contract, we recommend deleting the last clause referencing "blanket waiver" for purposes of professional risk assessment.

Comment 96.33(g):

agency or person uses an independent conducts a professional assessment of the risks it assumes, which includes the availability and cost of insurance coverage, and the requirements of (h) in this section, as the basis for determining the type and amount of professional, general, directors' and officer's and other liability insurance to carry. The risk assessment includes an evaluation of the risks of using supervised providers as provided for in 96.45 and 96.46 and of providing adoption services to clients. ~~who, consistent with 96.39(d), will not sign blanket waivers of liability~~

Comment 96.33(h):

The proposed rule to maintain professional liability insurance in "an amount not less than \$1,000,000 per occurrence" places an unreasonable, and in some cases, impossible burden on agencies and persons providing international adoption services. It is especially difficult in sections 96.45(c) and 96.46(c) to require the primary provider to assume "tort, contract and other civil liability" for supervised providers in the US and other Convention countries. Holt International is fortunate in that we have maintained professional liability (PL) insurance continuously since 1994. However, insurance premiums have increased considerably in recent years, with Holt's PL coverage increasing 230% since 1999. The availability of this insurance coverage has also declined as evidenced by the number of carriers willing to quote and write this type of policy. Four out of five carriers declined to quote this coverage in 2003. It is impossible to predict whether this coverage will continue to be available and at what price, under the proposed regulations.

2200 NE Oregon St.
Eugene, OR 97401
Phone: 541.325.2222
Fax: 541.325.2222
info@holtinternational.org
www.holtinternational.org



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Recommendation 96.33(h):

The agency or person maintains insurance in amounts reasonably related to its exposure to risk, ~~including the risks of providing services through supervised providers but in no case in an amount less than \$1,000,000 per occurrence~~

96.37 Education and experience requirements for social service personnel.

Comment:

Since "in-house" home studies prepared by agency employees are subject to the strenuous education requirements of 96.37(f). The educational qualifications for home study preparers appear to be the same whether the preparer is an exempt provider or a supervised provider. In both cases, the requirements are less than those for employees of an accredited agency.

The home study is a critical component of virtually every adoption, and the best interests of each adopted child are shortchanged if prospective adoptive parents are not professionally and thoroughly investigated in advance of any adoptive placement.

Recommendation:

home study preparers (exempted providers, supervised and accredited) **should be subject** to the same qualifications. Require supervisors who review and approve the study to have a master's degree.

Recommendation:

Add subsection (4) to 96.37(f):

(4) Bachelor level workers who are or were incumbent at the time of the Convention with significant skills and experience in intercountry adoption and are supervised by a master level supervisor be allowed to conduct home studies.

96.39 Information disclosure and quality control practices.

Comment:

The proposed rule prohibits the agency or person from requiring a client or prospective client to sign a "blanket waiver of liability in connection with the provision of adoption services in Convention cases". The proposed rules do not define the term, "blanket waiver". It is Holt's current practice to advise its clients of the many risks inherent in international adoption and require clients to partner with Holt by accepting the known and identified risks. These risks are clearly identified in our service contracts and in our view do not constitute a "blanket waiver of liability". As stated in an article on this topic:

"In a litigious society such as ours, the ability of an agency to educate prospective parents about the risks of international adoption and then to ask them to accept those risk is indispensable to an agency's ability to carry out

Post Office Box 2502
Eugene OR 97402
Fax 541.681.2611
Fax 541.683.1115
info@holtinternational.org
www.holtinternational.org



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its charitable purpose...Put simply, the risks are multiple and known; and absent an ability to require prospective adoptive parents to voluntarily accept the known risks, agencies may be precluded from their critical mission of finding homes for children.¹

Recommendation:

Current provision in 96.39(d) be eliminated and replaced with:

(d) The agency or person may require a client or prospective client to sign a waiver of liability in connection with the provision of adoption services in Convention cases, provided that it specifies in clear language the multiple risks of intercountry adoption and asks the client to voluntarily assume these risks as a condition of receiving services.

96.40 Fee policies and procedures.

Comment:

This section creates some confusion as to the specific accountability requirements placed on agencies. It is reasonable and desirable that agencies and persons clearly identify in advance any fees and expenses to be paid to the agency or person and the services provided in exchange for such fees and expenses. It is unclear whether the proposed regulations requires the agency to identify and estimate all the expenses a client may incur regardless whether the amounts are paid to the agency or to third parties. Examples of fees and expenses paid to third parties fees for obtaining birth and marriage certificates, notary fees, courier fees, etc.

The proposed regulations 96.40(g) also requires the agency to account for the "fees and expenses incurred within thirty days of the completion of the delivery of the services". This seems to require agencies to reiterate information about fees already provided in great detail under the terms of this section. In addition, it is not clear whether this rule requires the agency to provide an accounting of expenses incurred so as to substantiate the fees charged for services provided.

In addition, 96.40(d) appears to create an obligation for the agency to specifically identify a portion of a fee that may be used to support other purposes of the organization, such as, programs for adoptees, scholarships and other services. While it is reasonable to disclose that fees may help support other purposes of the adoption agency, it is not practical to provide an accounting of the use of such funds on a case by case basis.

Recommendation:

¹ Cooper, Howard M., "Enforcement of Contractual Release and Hold Harmless Language in Wrongful Adoption Cases," *Boston Bar Journal*, May/June 2000.



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(b) Before providing any adoption service to prospective adoptive parent(s), the agency or person itemizes and discloses in writing the following information for each separate category of fees and estimated additional expenses that the prospective adoptive parent(s) will be charged in connection with a Convention adoption.

When the agency or person uses part of its fees to provide special services, such as cultural programs for adoptee(s), scholarships for other services, it discloses this policy to the prospective adoptive parents(s) in advance of providing any adoption services. and gives the prospective adoptive parent(s) an explanation of the use of such funds

(f) The agency or person returns any funds to which the prospective adoptive parent(s) may be entitled within sixty days of the completion of the delivery of the services. at the same time that the agency or person provides the accounting required in paragraph (g) of this section

(g) Eliminate this paragraph. If this is not acceptable to the Department, then extend the deadline for providing the accounting to sixty days.

96.41 Complaint Registry Quarterly Reporting

Comment:

It agrees and supports the intent of the regulations and the establishment of a process to assess practice and a requirement that agencies be accountable for services delivered.

Holt, however, finds 96.41(f) excessive. The other requirements of this section adequately ensure that an agency is maintaining a record and responding appropriately. Paragraph (d) requires the agency to maintain a written record of each complaint and the steps taken to investigate it. Further, this record must be available to the accrediting entity, the Complaint Registry and the Secretary upon request. An additional safeguard is the review of this record of complaints by the accrediting entity at the time of re-accreditation or impromptu site visits.

Most significant argument against this additional burden on the agencies, however, is the complaint process itself (96.69 and 96.70). If provisions in 96.69 and 96.70 occurred, the Complaint Registry could require the agency to provide the record of their complaint history. If a complainant has filed a complaint with an agency and is not satisfied with the decision of the agency; and the matter cannot be resolved in the agency, they are provided a procedure and body (Complaint Registry) to hear their complaint. It would seem that if this occurred the Complaint Registry could require the agency to provide the record of their complaint history. To require all agencies to report *quarterly* when the Registry has so many other ways of monitoring agency activity and service delivery is encumbering upon the agency.

Recommendation:

Post Office Box 3885
Eugene, OR 97403
PH 541.385.2200
Fax 541.385.6977
info@holtinternational.org
www.holtinternational.org



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Holt recommends subsection (f) of 96.41 stricken from this regulation.

96.42 Case tracking, data management, and reporting.

Comment:

Requiring primary providers to maintain and track the exhaustive list of data identified and providing an annual report to the accrediting entity will be a costly and time consuming burden for many agencies. It is understandable, reasonable and undoubtedly valuable for the accrediting entity to request such a report but requiring it on an annual basis is excessive.

Recommendation:

Holt recommends that in 96.43(a), that the language "annually" be changed to "every other year"

When acting as the primary provider, the agency or person maintains all the data required in this section in a format approved by the accrediting entity and provides it to the accrediting entity on an annual quarterly basis.

96.45 & 96.46 Using Supervised Providers in the United States and in other Convention Countries.

Comment:

Holt International has great concern about 96.45(b)(8) and (c) and 96.46 (b)(9) and (c) requiring accredited agencies to be legally responsible for the acts of their supervised providers. While we understand the Department is trying to fulfill its stated "intent to give the adoptive parents legal recourse against a single entity so far as is reasonable" there are several areas of significant distress and problematic consequences.

While in truth, primary providers should exercise due diligence in identifying competent, reliable and professional providers in the US and other Convention countries, the regulations place an unreasonable burden on the primary provider to make it legally responsible for their acts. Many partner organizations in Convention countries are independent, indigenous, legally constituted organizations. Holt International believes strongly that US primary providers should exercise supervision (staff of the primary provider), as well as provide strong guidance, education and training for supervised providers in other Convention countries. However, US agencies are not able to exert the same control over independent organizations as with their own employees. In our view, the stringent criteria established for supervised providers in the US and other Convention countries provide very significant and important assurance, as well as transparency, for adoptive families regarding the partners utilized by the primary provider.

In addition, these risk and liability requirements will greatly increase the difficulty and cost of obtaining professional liability insurance.

Post Office Box 2880
Eugene, OR 97402
Phone: 541-325-1000
Fax: 541-325-1001
info@holtinternational.org
www.holtinternational.org



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With the exception of the risk and liability sections, the proposed rules offer appropriate standards, a more rigorous accountability structure, a complaint registry, and disciplinary actions. It would seem that these thorough provisions should be sufficient to monitor the adoption agencies and oversee supervised providers.

Recommendation:

Proposed rules 96.45(b)(8) and (c)(1) and (c)(2) and 96.46 (b)(9) and (c)(1) and (c)(2) be struck from the regulations.

Standards for Cases in Which a Child is Emigrating from the United States (96.53-96.56)

In addition to assuring protection to children entering the US for the purpose of adoption, Holt strongly recommends that children from the US being adopted by families in other countries be provided with the same assurances of post adoption services and citizenship in their adopted country.

Other Recommendations by Holt International Children's Services

Adequate support and funding of the Central Authority:

critical to the success of the implementation of the Hague Convention that adequate funding be committed to publishing the Central Authority. It is reasonable to expect that the international adoption process will be significantly altered once the Central Authority is in place and it is expected that there will be delays and required adjustments as this new entity is put in place. However, as the Central Authority will become the centerpiece of implementing the Hague Convention, it is imperative that necessary funding to provide sufficient staff, equipment and support to create and maintain the Central Authority be assured.

Risk and Liability:

To supplement the Complaint Procedures under the Hague, Holt recommends creating a position of Ombudsman within the Central Authority. Additionally, Holt supports establishing a citizen review or advisory panel to assist in maintaining communication and support between the Central Authority, the adoption community and the general public.

As a final recommendation, Holt International strongly urges that the Department of State republish the regulations on the IAA as interim proposed regulations before they are published in final form. Holt International has been consistently involved with the Hague Convention on Intercountry Adoption since the beginning process in the late 1980's. This process has been confusing, complex and at times polarizing and contentious. To assure the success of the implementation of the Convention, we believe it is critical for the State Department to continue its commitment to transparency, inclusion and involvement.

Holt Office Box 2886
Eugene, OR 97402
PH 541 684 2670
Fax 541 683 6170
info@holtinternational.org
www.holtinternational.org



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JAN 29 2004

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Headquarters

1 Office Box 2865
Lynchburg, VA 24502 U.S.A.
Phone: 841.652.2202
Fax: 841.653.6175
info@holtinternational.org
www.holtinternational.org

November 14, 2003

U.S. Department of State
Consular Affairs
Office of Citizens Services
Adoption Regulations Docket Room SA-29
2201 C Street NW
Washington, DC 20520

To Whom It May Concern:

We are writing to express our support of the comments submitted by Holt International to the proposed regulations for the Hague Convention on Inter-country Adoption. As the Board of Directors of Holt International Children's Services, we are deeply committed to the Convention and the protection it will provide in terms of assuring ethical and professional adoption practices.

Holt International is the oldest and largest intercountry adoption agency in the country. Holt pioneered intercountry adoption from Korea in the mid 1950's and since then have worked in more than 20 countries and places approximately a thousand children with adoptive families in the U.S. each year.

On behalf of the more than 20,000 children adopted annually by U.S. families, we urge you to move forward as quickly as possible toward implementation of the Hague Convention. At Holt we believe this is critical to assuring safe and ethical adoptions for the children who need families and the families who long to adopt them.

Sincerely,

Lawrence R. Cahill
Kim S. Brown

Board of Directors
Holt International Children's Services

Shirley Stewart
Steven S. Stirling
Kathryn R. Scheer
Rebecca C. Brandt
David L. Hafner
Kim S. Brown
Janet T. Patterson

Donna V. Bailey
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Claire A. Holand
R. Paul Dasher
A. Douglas Hillman
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